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MICHAEL RODAK,

No. 72-6294

In the
Supreme Court of the United States

OCTOBER TERM, 1972

ALFONSAS KAVALIAUSKAS,

Petitioner,

vs.

BOBBY D. RILEY and
DE BOER BROS., INC.,
an Illinois corporation,

Respondents.

On Petition For Writ Of Certiorari To The
Circuit Court of Cook County, Illinois
County Department, Law Division

BRIEF FOR RESPONDENTS IN OPPOSITION

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TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The respondents, Bobby D. Riley and De Boer Bros., Inc., an Illinois corporation, respectfully prays that this Court deny the Petition for a Writ of Certiorari to review the judgment of the Circuit Court of Cook County, Illinois, County Department, Law Division, entered in this proceeding on June 10, 1971.

OPINION BELOW

The order of the Supreme Court of the State of Illinois, No. 45318 (November 29, 1972, unpublished); the

orders of the Appellate Court of the State of Illinois, First District, No. 56314 (June 14, 1972 and July 7, 1972, unpublished) and the judgment order of the Circuit Court of Cook County, Illinois, County Department, Law Division, No. 68 L 4782 (June 10, 1971, unpublished), appear in the Appendix to the Petition.

JURISDICTION

The Respondent alleges that the Petition does not set forth the necessary jurisdictional requisites.

QUESTIONS PRESENTED

There appears to be no substantial federal question presented by the Petition.

STATUTORY PROVISIONS INVOLVED

The Petition and Appendix do not contain any statutory provisions sufficient to confer jurisdiction upon this Court to review the judgment of the Circuit Court of Cook County, Illinois.

STATEMENT

The Petitioner has failed to set forth the essential requisites to confer jurisdiction upon this Court. Further, the Petition fails to present any substantial federal question for consideration, contrary to the Rules of this Court.

The Petitioner's claim that the amount of the jury verdict was contrary to the manifest weight of the evidence is unsupported and without any reasonable basis.

In referring to the trial and post-trial motion proceedings (Pet. pp. 3 and 4), the Petitioner's allegations are wholly outside the abstract of proceedings and are replete with gross unsubstantiated misrepresentations.

ARGUMENT

I. The Petition fails to allege any substantial federal question or jurisdictional requisite.

The rules of this Court are clear. The Petition for Writ of Certiorari should indicate wherein the state court has decided a federal question of substance not theretofore determined by this Court, or has decided it in a way probably not in accord with applicable decision of this Court. U.S. Sup. Ct. Rule 19. 28 U.S.C.A.

Additionally, the Petitioner's statement of the case shall specify the stage in the proceedings in the Court of first instance and in the Appellate Court at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them and the way in which they were passed upon by the lower courts. U.S. Sup. Ct. Rule 23, 28 U.S.C.A.

In neither instance has the Petitioner complied with the Rules of this Court by either alleging or properly raising a substantial federal question for consideration by this Court.

Where there has been no substantial federal question presented by the state court judgment, this Court will not consider the case. *Zucht* v. *King,* 260 U.S. 174 (1922); *Tidal Oil Co.* v. *Flanagan,* 263 U.S. 444 (1924).

In the case herein, the Petitioner presents questions relating solely to the evidence and the propriety of the judgment entered by the court below.

This Court has stated that certiorari cannot be invoked to bring relief merely from erroneous judgments and has

further emphasized that granting certiorari will not be warranted merely to review the evidence and inferences drawn therefrom. *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175 (1938). The rulings on admissibility of evidence must normally be left to the sound discretion of the trial judge. *Lavender* v. *Kurn*, 327 U.S. 645 (1946).

The Petitioner's allegations as to conflicts in testimony and presentation of his case are certainly not a basis to grant certiorari. In *Milk Wagon Driver's Union of Chicago, Local 753* v. *Meadowmoor Dairies*, 312 U.S. 287 (1941) rehearing denied, 312 U.S. 715 (1941), it was held that conflicts in testimony and in its interpretation were for the state courts and not United States Supreme Court, and that the Supreme Court could not substitute its judgment for that of the state courts in that respect.

As to the Petitioner's attacks on his former attorney and Respondent's trial counsel; the Respondents cite the case of *Biggs* v. *Spader*, 411 Ill. 42, 103 N.E. 2d 104 (1951) rehearing denied (1952). In that case the Supreme Court of the State of Illinois in referring to contemptuous and impertinent expressions by the pro se Petitioner stated at page 106:

> "Such an attitude need not be tolerated in the press of vital and serious business matters that constantly come to this Court, nor may the records of his Court be used as a vehicle for abuse of the Judge, opposing counsel or other public officials."

The Respondent believes that the foregoing citation is most appropriate in regard to the Petitioner's allegations herein.

CONCLUSION

By virtue of the foregoing, Respondent respectfully prays that this Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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